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Schwegman, Lundberg, Woessner & Kluth, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402

EXAMINER

BOYD, JENNIFER A

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/021,867

Applicant(s)

KOPACZ ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 34-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 papers. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1- 33, drawn to a laminate, classified in class 428, subclass 181.
  - II. Claims 34 - 45, drawn to process of producing an internally tufted laminate, classified in class 264, subclass various.
  - III. Claims 48 - 49, drawn to a kit, classified in class 221, subclass various.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as spunbonding or hydroentangling to make the tufted material.
3. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of Group I has separate utility such as holding facial tissue. The invention of Group I can be individually wrapped instead of being dispensed by the kit of Group III. See MPEP § 806.05(d).
4. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different

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functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are mutually exclusive; the process as claimed has no bearing on the kit.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Albin Nelson on August 4, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1 - 33.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 34 - 49 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Objections***

8. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The Applicant states that a bi-layer material comprises the layer of tufted material and one of the at least two outer layers of the non-woven material. The Applicant

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has only named the physical grouping of a tufted layer and non-woven material as a “bi-layer” but has not added any further structure to claim. Claim 2 is not given any patentable weight at this time because it is not clear that it further limits claim 1.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1 – 11, 16 – 27 and 32 – 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Lange et al. (US 2002/0127937 A1).

Lange et al. is directed to a composite material with cloth-like feel (Title) suitable for disposable products such as diapers, tissues and wipes (page 1, section [0004]).

As to claim 1, Lange teaches a composite material comprising at least one elastic layer including a non-woven layer and at least one gatherable layer joined at spaced apart locations to the elastic layer so that the gatherable layer is gathered between the spaced-apart locations (page 2, section [0025]). The Examiner equates the elastic layer to one of Applicant’s “non-woven layer” and the gatherable layer to Applicant’s “layer of tufted material”. It should be noted that the gatherable web can be made of a non-woven web made from spunbonding, bonded carding and meltblowing (pages 2 - 3, section [0026]) which would result in fiber protrusions, or “tufted” areas. It should be noted that the Applicant states in the Specification on page 14, lines 10 – 18

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that the “tufts can be formed by a variety of methods, including, but not limited to, meltblown (polymer), cast film, spunbond, bonded-carded web, and so forth”. When the composite material is used as a wet-wipe, a soft elastic layer, or “non-woven layer”, is provided on both exposed surfaces of the wipe (page 5, section [0059]).

As to claim 2, the Examiner has not given any patentable weight to the claim at this time.

As to claims 3, 8 and 10, Lange teaches that the gatherable layer, or “tufted layer”, can be made from microfibers formed by various extrusion processes (page 5, section [0062]) such as polyolefins such as polyethylene and polypropylene (page 5, section [0065]). Lange teaches that the elastic layer, or “non-woven layer” can be made from a mixture of elastic and non-elastic fibers (page 9, section [0103]) such as a mixture of meltblown thermoplastic fibers and other materials such as wood pulp which are combined in a gas stream so that an intimate entangled commingling is formed (page 10, section [0103]). This type of non-woven is known in the art as coform.

As to claim 4, as mentioned above, Lange teaches that the elastic layer, or “non-woven layer” can be made from a mixture of elastic and wood pulp. Wood pulp is cellulose-based and, therefore, is absorbent.

As to claim 5, Lange teaches that the composite can comprise two gatherable layers 24 and 28 (page 5, section [0062]), which are equated to the Applicant’s “inner tufted laminate”.

As to claim 6, Lange teaches that the composite comprises *at least one* gatherable layer (page 2, section [0025]), or “tufted layer”. Therefore, in one embodiment, the composite can contain 3 tufted layers in which one is a single-tufted layer and the other is a “bi-layer” tufted laminate.

As to claim 7, Lange teaches that when the composite material is used as a wet-wipe, a soft elastic layer, or “non-woven layer”, is provided on both exposed surfaces of the wipe (page 5, section [0059]). Therefore, in one embodiment, the composite can contain a “bi-layer structure” comprising a soft elastic layer, or “non-woven layer”, and one of the tufted layers.

As to claim 9, it should be noted that the Examiner has given no patentable weight to the phrase “wire-tufted”, since process limitations are not given patentable weight in an article claim. Lange teaches that the gatherable layer, or “tufted layer”, can be made from microfibers formed by various extrusion processes (page 5, section [0062]) such as polyolefins such as polyethylene and polypropylene (page 5, section [0065]).

As to claim 11, Lange teaches that the gatherable layer or “tufted layer” can be made polyolefin fibers (page 5, section [0062]). It is known that polyolefins are thermoplastic, and therefore, are *capable of* being thermally bonded.

As to claim 16, it should be noted that the Examiner has given no patentable weight to “an internally wire-tufted laminate”. Furthermore, it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Also, it should be noted that a process limitation is not given patentable weight in a claim directed to an article. Lange teaches a composite material comprising at least one elastic layer including a non-woven layer and at least one gatherable layer joined at spaced apart locations to the elastic layer so that the gatherable layer is gathered between the spaced-apart locations (page 2, section [0025]). By gathering the gatherable web accordingly, the layer will be in a wave-like form with depressions and valleys. The Examiner

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equates the elastic layer to one of Applicant's "non-woven layer" and the gatherable layer to Applicant's "layer of tufted material". It should be noted that the gatherable web can be made of a non-woven web made from spunbonding, bonded carding and meltblowing (pages 2 - 3, section [0026]) which would result in fiber protrusions, or "tufted" areas. It should be noted that the Applicant states in the Specification on page 14, lines 10 - 18 that the "tufts can be formed by a variety of methods, including, but not limited to, meltblown (polymer), cast film, spunbond, bonded-carded web, and so forth". When the composite material is used as a wet-wipe, a soft elastic layer, or "non-woven layer", is provided on both exposed surfaces of the wipe (page 5, section [0059]).

As to claim 17, Lange teaches that the gatherable layer or "tufted layer" can be made polyolefin fibers (page 5, section [0062]). It is known that polyolefins are thermoplastic, and therefore, are *capable of* being thermally bonded at each tuft.

As to claim 18, Lange teaches that the composite material can comprise a *first gatherable web layer 24* and a *second gatherable web layer 28* which are connected together when fused to the elastic sheet (page 6, section [0076]). As previously discussed, the two gatherable layers can be considered to be tufted materials. By spunbonding or carding, both sides of the nonwoven would have tufted protrusions. Therefore, when the first and second gatherable web layers are connected together a plurality of tufts and valleys of one layer will be facing a plurality of tufts and valleys from the other layer.

As to claims 19 and 20, Lange teaches that an *elastic fibrous web 12* and the *gatherable layers 24* and *28* can be bonded together using a smooth anvil roller and patterned calendar roller. Lange teaches that various bonding patterns can be used and the bonding points are



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preferably evenly distributed over the bonding area of the composite material (page 7, [0077]).

Due to the patterned bonding, the projections will be shaped accordingly.

As to claim 21, Lange teaches that the composite material is suitable for disposable products such as diapers, tissues and wipes (page 1, section [0004]).

As to claims 22 and 27, Lange teaches a composite material, or “internally tufted laminate”, comprising at least one elastic layer including a non-woven layer and at least one gatherable layer joined at spaced apart locations to the elastic layer so that the gatherable layer is gathered between the spaced-apart locations (page 2, section [0025]). The Examiner equates the elastic layer to one of Applicant’s “non-woven layer” and the gatherable layer to Applicant’s “layer of tufted material”. It should be noted that the gatherable web can be made of a non-woven web made from spunbonding, bonded carding and meltblowing (pages 2 - 3, section [0026]) which would result in fiber protrusions, or “tufted” areas as required by claim 22 and 27. It should be noted that the Applicant states in the Specification on page 14, lines 10 – 18 that the “tufts can be formed by a variety of methods, including, but not limited to, meltblown (polymer), cast film, spunbond, bonded-carded web, and so forth”. When the composite material is used as a wet-wipe, a soft elastic layer, or “non-woven layer”, is provided on both exposed surfaces of the wipe (page 5, section [0059]). Lange teaches that the composite material can additionally contain a liquid (page 4, section [0056]).

As to claim 23, Lange teaches that the composite material, or “internally tufted laminate”, can contain components such as water, emollients, surfactants, fragrances, preservatives, chelating agents, pH buffers or combinations thereof (page 4, section [0056]).

As to claim 24, Lange teaches that the composite material, or “internally tufted laminate”, can contain lotions and/or medicaments (page 4, section [0056]).

As to claim 25, Lange teaches that the composite material, or “internally tufted laminate”, can be a wet-wipe material (page 4, section [0056]).

As to claim 26, Lange teaches that the composite material, or “internally tufted laminate”, can be disposable (page 1, section [0001]).

As to claims 32 and 33, Lange teaches that an *elastic fibrous web 12* and the *gatherable layers 24 and 28* can be bonded together using a smooth anvil roller and patterned calendar roller. Lange teaches that various bonding patterns can be used and the bonding points are preferably evenly distributed over the bonding area of the composite material (page 7, [0077]). Due to the patterned bonding, the projections will be shaped accordingly.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 12 – 15 and 28 – 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange et al. (US 2002/0127937 A1).

Lange discloses the claimed invention except for that each tuft is a projection measuring between 3 and 5 mm in length as required by claim 12 and 28, each tuft is a projection measuring at least about 1 mm in length as required by claim 13 and 29, each tuft is a projection measuring

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at least about 2 mm in length as required by claim 14 and 30 and each tuft is a projection measuring at least about 3 mm in length as required by claim 15 and 31. It should be noted that tuft length is a result effective variable. For example, as tuft length increases, the softness and bulkiness of the fabric increases. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create each tuft measuring between 3 and 5 mm in length as required by claim 12 and 28, each tuft is a projection measuring at least about 1 mm in length as required by claim 13 and 29, each tuft is a projection measuring at least about 2 mm in length as required by claim 14 and 30 and each tuft is a projection measuring at least about 3 mm in length as required by claim 15 and 31 since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have been motivated to optimize the bulkiness, softness and absorbency of the composite.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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*Jennifer Boyd*

Jennifer Boyd  
August 7, 2003

*Ma Ruddock*